

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
BCS MONTGOMERY, LLC

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the “**Agreement**”) is executed by and between the City of Montgomery, Texas (the “**City**”), the Montgomery Economic Development Corporation (the “**MEDC**”), and BCS Montgomery, LLC, a Texas limited liability company (“**BCS**”). The City, MEDC, and BCS may individually be referred to as a “**Party**” and collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, BCS is in the process of purchasing and developing approximately 39 acres of land located within Montgomery County, Texas (the “Tract”), as generally described and depicted in Exhibit “A.” The Tract will be composed of (i) approximately 27.916 acres of land (“Tract I”) located inside the corporate limits of the City, and (ii) approximately 11.084 acres of land (“Tract II”) to be used for a new commercial and multi-family developments; and

WHEREAS, the City has requested BCS to fund the design, management, and construction of certain public infrastructure improvements adjacent to the Tract, and, in return, BCS requested certain economic development incentives to defray a portion of those costs of the improvements and infrastructure associated with the Tract; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, as amended, and further, is in the best interests of the City, BCS and MEDC; and

WHEREAS, the Texas Development Corporation Act, contained in Chapters 501-505 of the Texas Local Government Code, as amended (the “**Act**”), authorizes the MEDC to provide economic development grants for infrastructure necessary to promote or develop new or expanded business enterprises and as such, constitutes a “**project**,” as that term is defined in the **Act**; and

WHEREAS, the City and the MEDC have determined that making economic development grants to BCS in accordance with this Agreement will further the objectives of the City and the MEDC, will benefit the City and the City’s inhabitants, will promote local economic development, will stimulate commercial and business activity, and will generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, the MEDC, and BCS covenant and agree as follows:

1. **Definitions.** For purposes of this Agreement, each of the following terms shall have the meaning set forth below unless the context clearly indicates otherwise:

“Annual Sales Tax Grants” shall mean economic development grants, each in the amount equal to that portion of the Sales Tax Receipts received by the City and the MEDC for the applicable Sales Tax Reporting Period, to be paid annually to BCS as set forth herein. The amount of each Annual Sales Tax Grant shall be computed by multiplying the Sales Tax Receipts received by the City by ninety-five percent (95%) and for the MEDC by fifty percent (50%) for the given Sales Tax Reporting Period times, less the administrative fee charged to the City and MEDC by the State of Texas. For purposes of clarification, and as defined in “Sales and Use Tax,” below, the sales tax referenced herein subject to the aforementioned ninety-five percent (95%) and fifty percent (50%) limitation is (i) the City’s one percent (1.0%) general municipal sales and use tax imposed pursuant to Chapter 321, Texas Tax Code, on the sale of Taxable Items consummated on the Tract; and (ii) with respect to the MEDC, one-quarter of one percent (0.25%) sales and use tax imposed pursuant to the Texas Development Corporation Act, Chapter 501, Texas Local Government Code.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within one hundred twenty (120) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within one hundred twenty (120) days after the filing thereof.

“Commencement Date” shall mean the date a certificate of occupancy is issued by the City for occupancy of the Improvements by BCS.

“Completion of Construction” shall mean that (i) substantial completion of the Improvements has occurred; and (ii) the City has issued a certificate of occupancy for occupancy of the Improvements by BCS.

“Consummated” is defined in Section 321.203, Texas Tax Code, or its successor.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the earlier of: (i) ten (10) years from the Effective Date of this agreement; or (ii) the date of payment of the Maximum Sales Tax Grant amount.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions or floods, strikes,

slowdowns or work stoppages, and epidemic, pandemic, or other widespread disease (and including delays due thereto continuing after such event has ended).

"Impositions" shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees and other charges, whether general or special, ordinary or extraordinary, foreseen or unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority or the City on BCS, and/or a BCS affiliate, and applicable to the development of the Tract or any property or any business owned by BCS.

"Improvements" shall mean the SH-105 Waterline, the SH-150 Sanitary Sewer Line, the On-Site Waterline, the On-Site Sanitary Sewer Line, and the South CB Stewart Drive Roadway Improvements (as such terms are defined in that certain Development Agreement dated _____, by the City and BCS) to be constructed on the Tract, more fully described in the submittals filed by BCS with the City, from time to time, in order to obtain a building permit(s).

"Maximum Sales Tax Grant" shall mean the cumulative payment of Annual Sales Tax Grants to BCS in the amount up to four million eight hundred thousand dollars (\$4,800,000.00), provided however, in the event the North CB Stewart Drive Roadway Improvements (as such term is defined in the Development Agreement) are required, the payment of Annual Sales Tax Grants to BCS shall be proportionately increased.

"Party" shall mean any party to this Agreement.

"Payment Request" shall mean a written request from BCS to the City and the MEDC for payment of an Annual Sales Tax Grant for the applicable Sales Tax Reporting Period.

"Sales and Use Tax" shall mean (i) with respect to the City, the City's one percent (1.0%) general municipal sales and use tax imposed pursuant to Chapter 321, Texas Tax Code, on the sale of Taxable Items consummated on the Tract; and (ii) with respect to the MEDC, one-quarter of one percent (0.25%) sales and use tax imposed pursuant to the Texas Development Corporation Act, Chapter 501, Texas Local Government Code, on behalf of MEDC, on the sale of Taxable Items consummated on the Tract, and MEDC sales and use tax proceeds shall be utilized only for those purposes authorized pursuant to the Texas Development Corporation Act.

"Sales Tax Area Reports" shall mean reports provided by the Comptroller to the City pursuant to Texas Tax Code, Section 321.3022, or other provision of the Texas Tax Code, with respect to Sales and Use Tax allocations to the City attributable to the sale of Taxable Items by BCS consummated on the Tract or if such reports are not available from the Comptroller, such other documentation in a form reasonably acceptable to the City setting forth the collection of Sales and Use Tax by BCS received by the City from the Comptroller for the sale of Taxable Items by BCS consummated on the Tract.

"Sales Tax Certificate" shall mean one or more Sales Tax Area Reports or a report provided by the Comptroller to the City in accordance with Section 321.3022, Texas Tax Code (or other applicable provision of the Texas Tax Code), which lists the amount of Sales and Use Tax collected (including any refunds, credits or adjustments) for the Sales Tax Reporting Period paid by a business located on the property and received by the City (and the MEDC) from the

Comptroller from the sale of Taxable Items consummated on the Tract and, in turn, paid by the Comptroller to the City (and to the City on behalf of the MEDC) for use by the City in accordance with this Agreement; or, if such a report is not available, then a certificate or statement in a form reasonably approved by the City, setting forth the collection of Sales and Use Tax (including any refunds, credits or adjustments) received by the City from the Comptroller, from the sale of Taxable Items consummated on the Tract, including supporting documentation, to be provided by BCS that provides the same or similar information, as such other information as the City may reasonably require from time to time.

“Sales Tax Receipts” shall mean (i) with respect to the City, the City’s receipt of the City’s Sales and Use Tax from the Comptroller from collection of Sales and Use Tax (it being expressly understood that the City’s use of the sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes) as a result of the sale of Taxable Items for the Sales Tax Reporting Period consummated on the Tract; and (ii) with respect to the MEDC, the MEDC’s receipt of the MEDC’s Sales and Use Tax from the Comptroller from collection of Sales and Use Tax (it being expressly understood that the MEDC use of the sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for authorized economic development purposes) as a result of the sale of Taxable Items by BCS for the Sales Tax Reporting Period consummated on the Tract.

“Sales Tax Reporting Period” shall mean a calendar year (with the calendar year ending December 31) except that the first Sales Tax Reporting Period shall begin on the Commencement Date and continue through and include the last day of the first full calendar year following the Commencement Date.

“State of Texas” shall mean the Office of the Texas Comptroller, or its successor.

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

“Tract” shall mean the approximately 39 acres of land to be developed by Developer, as described in Exhibit A attached hereto and incorporated herein.

“Tract I” shall mean the approximately 27.916 acres of land to be developed by Developer for commercial purposes, as described in Exhibit B attached hereto and incorporated herein.

“Tract II” shall mean the approximately 11.084 acres of land to be developed by Developer for multi-family purposes, as described in Exhibit C attached hereto and incorporated herein.

2. Sales Tax Grants.

(a) Annual Sales Tax Grants. Subject to the continued satisfaction of all the terms and conditions of this Agreement by BCS, the City and the MEDC (collectively referred to as “Grantors”) agree to provide BCS with an Annual Sales Tax Grant until the Expiration Date of this Agreement, not to exceed the Maximum Sales Tax Grant in the aggregate. The Annual Sales

Tax Grants shall be paid within ninety (90) days after receipt of a Payment Request. Each Payment Request shall be submitted to the City not later than April 1 of the calendar year immediately following the end of the applicable Sales Tax Reporting Period (or 90 days immediately following the end of the applicable Sales Tax Reporting Period if such period is not on a calendar year basis), beginning with the first Sales Tax Reporting Period. Failure to timely submit a Payment Request for a given Sales Tax Grant Reporting Period shall require the City to notify BCS of such failure to submit and give BCS thirty (30) days to cure after its receipt of such notice.

(b) Refunds and Underpayments of Annual Sales Tax Grants. In the event the State of Texas issues a final determination that the City erroneously received (or failed to receive), for the benefit of the City and the MEDC, Sales Tax Receipts, or that the amount of Sales and Use Tax paid exceeds (or is less than) the correct amount of Sales and Use Tax for a previous Sales Tax Reporting Period, for which BCS has received an Annual Sales Tax Grant, BCS shall, within sixty (60) days after receipt of notification thereof from the City specifying the amounts by which such Annual Sales Tax Grant exceeded (or was less than) the amount to which BCS was entitled, adjust (up or down, depending on the facts) the amount claimed due for the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such determination. If BCS does not adjust the amount claimed due for the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination the City may, at its option, adjust the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination. If the adjustment results in funds to be paid back to the City for the benefit of the City and the MEDC, BCS shall repay its respective amounts to the City within ninety (90) days after receipt of such State of Texas determination; provided as a condition precedent to payment of such refund, the City shall provide BCS with a copy of such determination issued by the State of Texas. If the adjustment results in additional funds to be paid to BCS, the City shall pay such amount to BCS as part of the next Annual Sales Tax Grant payment. The provisions of this Section shall survive termination of this Agreement.

(c) Grant Payment Termination: Suspension. The payment of the Annual Sales Tax Grants shall terminate on the effective date of a final determination by the State of Texas or other appropriate agency or court of competent jurisdiction that the Tract is not a place of business resulting in Sales and Use Taxes being due the City (and/or the MEDC) from the sale of Taxable Items on the Tract. In the event the State of Texas seeks to invalidate the Tract as a place of business where Sales and Use Tax was properly remitted to the State of Texas (the "Comptroller Challenge") the payment of Annual Sales Tax Grants by the City (including the MEDC) hereunder shall be suspended until such Comptroller Challenge is resolved in whole favorably to the City (including the MEDC). In such event, BCS shall not be required to return or refund Annual Sales Tax Grants previously received from the City provided BCS is actively defending against and/or contesting the Comptroller Challenge and BCS promptly informs the City in writing of such BCS actions and with copies of all documents and information related thereto. In the event the Comptroller Challenge is resolved favorably to the City, the City shall remit to BCS all unpaid Annual Sales Tax Grants that it would have otherwise been entitled to during the suspension due to the Comptroller Challenge. In the event the Comptroller Challenge is not resolved favorably to the City and/or in the event the State of Texas determines that the Tract is not a place of business where the Sales and Use Tax was properly remitted to the State of Texas, and Sales and Use Tax Receipts previously paid or remitted to the City relating to the Improvements are reversed and

required to be repaid to the State of Texas, then the obligation to pay the Annual Sales Tax Grants shall terminate and BCS shall refund all respective amounts of Annual Sales Tax Grants received by BCS from the City that relate to the Comptroller Challenge, which refund shall be paid to the City within ninety 90 days after the date that the Comptroller Challenge required the City to repay Sales and Use Tax Receipts.

(d) Sales Tax Reports. The City and BCS designate this Agreement as a “revenue sharing agreement,” thereby entitling the City to request annual sales and use tax information from the Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended. The City shall request in writing that the Comptroller issue sales tax reports pursuant to Section 321.3022 for total sales of Taxable Items consummated on the Tract by BCS and the payment of Sales and Use Tax (the “Sales Tax Reports”) for each calendar year during the term hereof.

(e) Confidentiality. Unless otherwise determined by the Texas Attorney General in writing, the sales and use tax documentation referenced in this Agreement shall be considered confidential financial information contained in a public document (or other reproduction media) not subject to release to the public. The City shall seek a written opinion from the Texas Attorney General raising any applicable exception to release, prior to any release to a third-party under the Texas Public Information Act. The Parties agree, however, that this Agreement shall not be considered confidential.

3. Administration. The City, by and through its City Administrator, or designee, shall have the authority to administer this Agreement on behalf of the MEDC, including the receipt of Payment Requests and the payment of Annual Sales Tax Grants on behalf of the MEDC.

4. Obligations. The obligation of the City and the MEDC to provide the Annual Sales Tax Grants hereunder shall be conditioned upon the compliance and satisfaction of each of the terms and conditions of this Agreement by BCS and each of the terms and conditions set forth below:

(a) Tenant Lists. BCS shall provide the City with an updated list of tenants at the Tract each year in December. This list should include all businesses that occupied the Tract during the calendar year. This list will be used to calculate the Annual Sales Tax collected at the Tract. Failure to provide the tenant list may impact the timely delivery of the Sales Tax Grant payment.

(b) Good Standing. BCS shall not have an uncured breach of this Agreement.

(c) Completion of Construction of the Improvements. BCS shall, subject to events of Force Majeure, cause Completion of Construction to occur on or before _____.

5. Termination Provisions.

(a) Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (1) by mutual written agreement of the Parties;
- (2) by a Party, if another Party defaults or breaches any of the terms or conditions of this Agreement, and such default or breach is not cured within ninety (90) days after written notice thereof, provided it shall not constitute a breach or default if corrective action is instituted by or on behalf of such Party within the ninety (90) day period and diligently pursued until the breach or default is corrected;
- (3) by the City and/or the MEDC, if any Impositions owed to the City, the MEDC or the State of Texas by BCS with respect to the Tract shall have become delinquent (provided, however, BCS retains the right to timely and properly protest and contest any such taxes or Impositions);
- (4) by the City and/or the MEDC, if BCS suffers a Bankruptcy or Insolvency;
- (5) by any Party if any subsequent federal or state legislation or any final and non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or

(b) Offsets. The City (and on behalf of the MEDC) may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City and/or the MEDC from BCS, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise, provided, however, the debt due the City has been finally determined or reduced to judgment by a court of competent jurisdiction.

6. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties.

7. Limitation on Liability. It is understood and agreed between the Parties that BCS in satisfying the conditions of this Agreement has acted independently, and the City and the MEDC assume no responsibilities or liabilities to third parties in connection with BCS actions. Further, BCS agrees to indemnify and hold harmless the City and the MEDC from all claims, suits, demands, and causes of actions by a third party arising solely out of its own, but not the other's, actions and performance under this Agreement, as hereinafter referenced.

8. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

9. Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

10. Construction of Agreement; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties

created hereunder are performable in Montgomery County, Texas. Venue for any action arising under this Agreement shall lie in Montgomery County, Texas.

11. Notices. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City, to:

City of Montgomery, Texas
101 Old Plantersville Road
Montgomery, TX 77535
Attention: City Administrator

With a copy to City attorney:

Johnson Petrov LLP
2929 Allen Parkway, Suite 3150
Houston, TX 77019
Attention: Alan P. Petrov

If to the Developer, to:

BCS Montgomery LLC Attn:
Jack Burgher, Manager
1940 Fountain View Drive, Suite 220
Houston, Texas 77057 With

a copy to:

Acuff & Associates, PLLC 2340
Lipscomb Street
Fort Worth, Texas 76110

12. Attorney's Fees to Prevailing Party. In the event any Party initiates or defends any legal action or proceeding against another Party to enforce or interpret any of the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

13. Entire Agreement; Binding Effect of Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

14. Indemnification.

(a) BCS AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, THE MEDC, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR THE PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS INSO FAR AS SUCH LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS ARISE OUT OF A CLAIM BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, HAS BEEN OVER-PAID OR HAS BEEN INCORRECTLY ALLOCATED SALES AND USE TAX ATTRIBUTED SOLELY TO THE SALE OF TAXABLE ITEMS BY BCS AND/OR BCS AFFILIATES CONSUMMATED ON THE TRACT DURING THE TERM OF THIS AGREEMENT, IT BEING THE INTENTION OF THE PARTIES THAT BCS SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL SALES TAX GRANTS PAID TO BCS HEREIN BY THE CITY (AND THE MEDC) THAT RELATE TO SALES AND USE TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE ERRONEOUSLY PAID, DISTRIBUTED, OR ALLOCATED TO OR COLLECTED BY THE CITY. THE INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM ERRORS OR OMISSIONS OF THE CITY OR THE MEDC. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM BCS TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 15, IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT AND TO THE EXTENT THAT ANY INDEMNIFIED PARTY IS ENTITLED TO INDEMNIFICATION FROM BCS UNDER THE TERMS OF PARAGRAPH (A) ABOVE IN RESPECT OF ANY OF THE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS REFERRED TO THEREIN, BCS SHALL NOT BE JOINTLY AND SEVERALLY LIABLE FOR SUCH AMOUNT, BUT INSTEAD SHALL EACH BE RESPONSIBLE INDIVIDUALLY ONLY FOR AN AMOUNT EQUAL TO FIFTY PERCENT (50%) OF THE AMOUNT PAYABLE TO ANY SUCH INDEMNIFIED PARTY AND SUCH AMOUNT PAYABLE BY EACH OF BCS SHALL BE LIMITED TO AND SHALL NOT EXCEED THE TOTAL AMOUNT OF ANNUAL SALES TAX GRANTS PREVIOUSLY RECEIVED BY EACH OF THEM PURSUANT TO THIS AGREEMENT.

15. **Invalidation.** Invalidation of any one of the provisions of this Agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

16. **Facsimile.** A telecopied or electronic facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

17. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

18. **Authority to Execute Agreement.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that (1) it has all requisite power and authority under the Constitution and laws of the State of Texas to enter into and perform its obligations under this Agreement, and (2) the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The MEDC warrants and represents (1) it has all requisite power and authority under the Constitution and laws of the State of Texas to enter into and perform its obligations under this Agreement, and (2) the individual executing this Agreement on behalf of the MEDC has full authority to execute this Agreement and bind the MEDC to the same.

BCS warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind BCS to same.

19. **Non-Binding Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

20. **Compliance with Chapter 2264, Texas Government Code.** BCS certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, BCS, or its successors, heirs, assigns, grantees, trustees, representatives, and all others holding any interest in the Tract now or in the future, is convicted of a violation under 8 U.S.C. § 1324a(f), BCS shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date the City notifies BCS of the violation.

21. **Amendment.** This Agreement may only be amended by a written agreement executed by the Parties.

22. **Recitals.** The recitals in this Agreement are true and correct, represent representations and warranties of the Parties, and are incorporated as part of this Agreement for all purposes.

23. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

24. **Exhibits.** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

25. **Survival of Covenants.** Any covenants of the Parties that are to be performed after termination of this Agreement shall survive termination of this Agreement.

26. Assignment. This Agreement may not be assigned by BCS, in whole or in part, without the prior written consent of the City and the MEDC. Any attempted assignment by BCS in violation of the terms and provisions of this section shall be void.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

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CITY OF MONTGOMERY, TEXAS

Sara Countryman, Mayor

Date: _____

**MONTGOMERY ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

Name: _____

Title: _____

Date: _____

**BCS MONTGOMERY LLC,
a Texas limited liability company**

By: BCS Capital Management LLC,
its Manager

By: _____
Name: Robert Cannon
Title: Manager

Date: _____

EXHIBIT "A"
METES AND BOUNDS DESCRIPTION OF THE TRACT

Tract I:

County: Montgomery
Project: 20500 Eva St Montgomery
M&B No: 24-226(r)
CS Job No: 24222

METES AND BOUNDS DESCRIPTION OF A 32.409 ACRE TRACT

Being a tract of land containing 32.409 acres, located in the John Corner Survey, Abstract Number 9, in Montgomery County, Texas; Said 32.409 acres being out of a called 84.10 acre tract of land recorded in the name of Mara Moja Holdings, LLC in Montgomery County Clerk's File (M.C.C.F.) Number 2004110206 and being out of Restricted Reserve "B" of Mara Mojaville, a subdivision recorded in Cabinet "Z", Sheet 1624, of the Montgomery County Map Records (M.C.M.R.); Said 32.409 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System of 1983, Central Zone):

BEGINNING, at a 5/8-inch iron rod found at the north corner of Restricted Reserve "A" of said Mara Mojaville on the southeast Right-of-Way (R.O.W.) line of C.B. Stewart Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.);

THENCE, with the southeast R.O.W. line of said C.B. Stewart Drive the following three (3) courses:

1. 205.87 feet along the arc of a curve to the right, having a radius of 610.00 feet, a central angle of $19^{\circ} 20' 11''$, and a chord that bears North $38^{\circ} 16' 00''$ East, a distance of 204.89 feet to a 5/8-inch iron rod found for a point of tangency;
2. North $47^{\circ} 56' 06''$ East, a distance of 396.03 feet to a 5/8-inch iron rod found for an angle point;
3. North $54^{\circ} 32' 00''$ East, a distance of 71.22 feet to a 5/8-inch iron rod found for the west corner of a transition line from the southeast R.O.W. line of said C.B. Stewart Drive to the southwest R.O.W. line of Buffalo Springs Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.);

THENCE, South $89^{\circ} 13' 47''$ East, with said transition line, a distance of 16.46 feet to a 5/8-inch iron rod found for the east corner of said transition line;

THENCE, with the southwest and west R.O.W. lines of said Buffalo Springs Drive the following six (6) courses:

1. South $52^{\circ} 59' 33''$ East, a distance of 95.45 feet to a 5/8-inch iron rod found for an angle point;
2. South $47^{\circ} 27' 18''$ East, a distance of 545.16 feet to a 5/8-inch iron rod found for the beginning of a curve to the right;
3. 689.43 feet along the arc of a curve to the right, having a radius of 710.00 feet, a central angle of $55^{\circ} 38' 08''$, and a chord that bears South $19^{\circ} 38' 14''$ East, a distance of 662.66 feet to a 5/8-inch capped iron rod set for a point of tangency;

4. South $08^{\circ} 10' 49''$ West, a distance of 285.23 feet to a 5/8-inch capped iron rod found for an angle point;
5. South $11^{\circ} 32' 49''$ West, a distance of 340.59 feet to a 5/8-inch iron rod found for an angle point;
6. South $08^{\circ} 10' 49''$ West, a distance of 146.53 feet to a 5/8-inch capped iron rod set at the northwest intersection of said Buffalo Springs Drive and State Highway 105 (width varies) on the south line of said 84.10 acre tract;

THENCE, North $81^{\circ} 56' 46''$ West, with south line of said 84.10 acre tract and the north R.O.W. line of said State Highway 105, a distance of 793.09 feet to a 5/8-inch capped iron rod found for the southeast corner of a called 6.59 acre tract of land recorded in the name of AMJJ, LLC in M.C.C.F. Number 2013017790, from which a Texas Department of Transportation monument found for an angle point in the north line of said State Highway 105 bears North $81^{\circ} 56' 46''$ West, a distance of 288.26 feet;

THENCE, North $01^{\circ} 53' 11''$ East, through and across said 84.10 acre tract and said Restricted Reserve "B" and with the east line of said 6.59 acre tract, a distance of 776.31 feet to a 5/8-inch capped iron rod found for the northeast corner of said 6.59 acre tract;

THENCE, North $89^{\circ} 22' 41''$ West, continuing through and across said 84.10 acre tract and said Restricted Reserve "B" and with the north line of said 6.59 acre tract, a distance of 388.34 feet to a 5/8-inch capped iron rod found for the northwest corner of said 6.59 acre tract on the southeast R.O.W. line of aforesaid C.B. Stewart Drive;

THENCE, North $02^{\circ} 24' 12''$ East, with the west line of said Restricted Reserve "B" and the southeast R.O.W. line of said C.B. Stewart Drive, a distance of 30.01 feet to a 5/8-inch capped iron rod set at the northwest corner of said Restricted Reserve "B" and the southwest corner of Restricted Reserve "A" of said Mara Mojaville;

THENCE, South $89^{\circ} 23' 37''$ East, with a line common to said Restricted Reserve "B" and said Restricted Reserve "A", a distance of 339.00 feet to a 5/8-inch capped iron rod set for an angle point;

THENCE, through and across said Restricted Reserve "B", the following two (2) courses:

1. North $04^{\circ} 42' 11''$ West, a distance of 116.44 feet to a 5/8-inch capped iron rod set for an angle point;
2. North $34^{\circ} 33' 56''$ West, a distance of 140.83 feet to a 5/8-inch capped iron rod set on the east line of said Restricted Reserve "A";

THENCE, with the lines common to said Restricted Reserve "A" and "B", the following two (2) courses:

1. North $02^{\circ} 13' 14''$ West, a distance of 106.54 feet to a 5/8-inch iron rod found for the northeast corner of said Restricted Reserve "A";
2. **THENCE**, North $61^{\circ} 57' 37''$ West, with the north line of said Restricted Reserve "A", a distance of 186.90 feet to the **POINT OF BEGINNING** and containing 32.409 acres of land.

Tract II:

County: Montgomery

Project: 20500 Eva St Montgomery

M&B No: 25-070

CS Job No: 24222

METES AND BOUNDS DESCRIPTION OF A 6.591 ACRE TRACT

Being a tract of land containing 6.591 acres, located in the John Corner Survey, Abstract Number 9, in Montgomery County, Texas; Said 6.591 acres being all of a called 6.59 acre tract of land recorded in the name of AMJJ, LLC in Montgomery County Clerk's File Number (M.C.C.F. No.) 2013017790; Said 6.591 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System of 1983, Central Zone):

BEGINNING, at a 5/8-inch iron rod found at the southwest corner of said 6.59 acre tract, same being the northeast intersection of State Highway 105 (width varies) and C.B. Stewart Drive (width varies per Cabinet "Y", Sheet 51, of the Montgomery County Map Records (M.C.M.R.)), for the southwest corner of the herein described tract;

THENCE, with the west lines of said 6.59 acre tract and with the east Right-of-Way (R.O.W.) line of said C.B. Stewart Drive, the following three (3) courses:

1. North 02° 19' 12" East, a distance of 152.89 feet to a 5/8-inch iron rod found at an angle point;
2. North 00° 32' 17" West, a distance of 400.50 feet to a 5/8-inch iron rod found at an angle point;
3. North 02° 24' 12" East, at a distance of 36.56 feet pass a 5/8-inch iron rod found at the southwest corner of Restricted Reserve "B" of Mara Mojaville, a subdivision recorded in Cabinet "Z", Sheet 1624, of the M.C.M.R., continuing with the west line of said Restricted Reserve "B" an overall distance of 182.09 feet to a 5/8-inch capped iron rod found at the northwest corner of said 6.59 acre tract and the herein described tract;

THENCE, South 89° 22' 41" East, with the north line of said 6.59 acre tract, through and across said Restricted Reserve "B", a distance of 388.34 feet to a 5/8-inch capped iron rod found at the northeast corner of said 6.59 acre tract and the herein described tract;

THENCE, South 01° 53' 11" West, with the east line of said 6.59 acre tract and continuing through and across said Restricted Reserve "B", at a distance of 126.76 feet pass the south line of said Restricted Reserve "B", same being an angle point in the remainder of a called 84.10 acre tract recorded in the name of Mara Moja Holdings, Ltd. in M.C.C.F. No. 2004110206, continuing an overall distance of 776.31 feet to a 5/8-inch capped iron rod found at the southeast corner of said 6.59 acre tract, on the north R.O.W. line of said State Highway 105, for the southeast corner of the herein described tract;

THENCE, with the south lines of said 6.59 acre tract, and with the north R.O.W. lines of said State Highway 105, the following two (2) courses:

1. North 81° 49' 28" West, a distance of 288.26 feet to a 5/8-inch iron rod with a Texas Department of Transportation aluminum disk found at an angle point;
2. North 87° 25' 36" West, a distance of 87.58 feet to the **POINT OF BEGINNING** and containing 6.591 acres of land.

EXHIBIT "B"
METES AND BOUNDS DESCRIPTION OF TRACT I

Tract I:

County: Montgomery
Project: 20500 Eva St Montgomery
M&B No: 24-226(r)
CS Job No: 24222

METES AND BOUNDS DESCRIPTION OF A 32.409 ACRE TRACT

Being a tract of land containing 32.409 acres, located in the John Corner Survey, Abstract Number 9, in Montgomery County, Texas; Said 32.409 acres being out of a called 84.10 acre tract of land recorded in the name of Mara Moja Holdings, LLC in Montgomery County Clerk's File (M.C.C.F.) Number 2004110206 and being out of Restricted Reserve "B" of Mara Mojaville, a subdivision recorded in Cabinet "Z", Sheet 1624, of the Montgomery County Map Records (M.C.M.R.); Said 32.409 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System of 1983, Central Zone):

BEGINNING, at a 5/8-inch iron rod found at the north corner of Restricted Reserve "A" of said Mara Mojaville on the southeast Right-of-Way (R.O.W.) line of C.B. Stewart Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.);

THENCE, with the southeast R.O.W. line of said C.B. Stewart Drive the following three (3) courses:

1. 205.87 feet along the arc of a curve to the right, having a radius of 610.00 feet, a central angle of $19^{\circ} 20' 11''$, and a chord that bears North $38^{\circ} 16' 00''$ East, a distance of 204.89 feet to a 5/8-inch iron rod found for a point of tangency;
2. North $47^{\circ} 56' 06''$ East, a distance of 396.03 feet to a 5/8-inch iron rod found for an angle point;
3. North $54^{\circ} 32' 00''$ East, a distance of 71.22 feet to a 5/8-inch iron rod found for the west corner of a transition line from the southeast R.O.W. line of said C.B. Stewart Drive to the southwest R.O.W. line of Buffalo Springs Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.);

THENCE, South $89^{\circ} 13' 47''$ East, with said transition line, a distance of 16.46 feet to a 5/8-inch iron rod found for the east corner of said transition line;

THENCE, with the southwest and west R.O.W. lines of said Buffalo Springs Drive the following six (6) courses:

1. South $52^{\circ} 59' 33''$ East, a distance of 95.45 feet to a 5/8-inch iron rod found for an angle point;
2. South $47^{\circ} 27' 18''$ East, a distance of 545.16 feet to a 5/8-inch iron rod found for the beginning of a curve to the right;
3. 689.43 feet along the arc of a curve to the right, having a radius of 710.00 feet, a central angle of $55^{\circ} 38' 08''$, and a chord that bears South $19^{\circ} 38' 14''$ East, a distance of 662.66 feet to a 5/8-inch capped iron rod set for a point of tangency;

4. South $08^{\circ} 10' 49''$ West, a distance of 285.23 feet to a 5/8-inch capped iron rod found for an angle point;
5. South $11^{\circ} 32' 49''$ West, a distance of 340.59 feet to a 5/8-inch iron rod found for an angle point;
6. South $08^{\circ} 10' 49''$ West, a distance of 146.53 feet to a 5/8-inch capped iron rod set at the northwest intersection of said Buffalo Springs Drive and State Highway 105 (width varies) on the south line of said 84.10 acre tract;

THENCE, North $81^{\circ} 56' 46''$ West, with south line of said 84.10 acre tract and the north R.O.W. line of said State Highway 105, a distance of 793.09 feet to a 5/8-inch capped iron rod found for the southeast corner of a called 6.59 acre tract of land recorded in the name of AMJJ, LLC in M.C.C.F. Number 2013017790, from which a Texas Department of Transportation monument found for an angle point in the north line of said State Highway 105 bears North $81^{\circ} 56' 46''$ West, a distance of 288.26 feet;

THENCE, North $01^{\circ} 53' 11''$ East, through and across said 84.10 acre tract and said Restricted Reserve "B" and with the east line of said 6.59 acre tract, a distance of 776.31 feet to a 5/8-inch capped iron rod found for the northeast corner of said 6.59 acre tract;

THENCE, North $89^{\circ} 22' 41''$ West, continuing through and across said 84.10 acre tract and said Restricted Reserve "B" and with the north line of said 6.59 acre tract, a distance of 388.34 feet to a 5/8-inch capped iron rod found for the northwest corner of said 6.59 acre tract on the southeast R.O.W. line of aforesaid C.B. Stewart Drive;

THENCE, North $02^{\circ} 24' 12''$ East, with the west line of said Restricted Reserve "B" and the southeast R.O.W. line of said C.B. Stewart Drive, a distance of 30.01 feet to a 5/8-inch capped iron rod set at the northwest corner of said Restricted Reserve "B" and the southwest corner of Restricted Reserve "A" of said Mara Mojaville;

THENCE, South $89^{\circ} 23' 37''$ East, with a line common to said Restricted Reserve "B" and said Restricted Reserve "A", a distance of 339.00 feet to a 5/8-inch capped iron rod set for an angle point;

THENCE, through and across said Restricted Reserve "B", the following two (2) courses:

1. North $04^{\circ} 42' 11''$ West, a distance of 116.44 feet to a 5/8-inch capped iron rod set for an angle point;
2. North $34^{\circ} 33' 56''$ West, a distance of 140.83 feet to a 5/8-inch capped iron rod set on the east line of said Restricted Reserve "A";

THENCE, with the lines common to said Restricted Reserve "A" and "B", the following two (2) courses:

1. North $02^{\circ} 13' 14''$ West, a distance of 106.54 feet to a 5/8-inch iron rod found for the northeast corner of said Restricted Reserve "A";
2. **THENCE**, North $61^{\circ} 57' 37''$ West, with the north line of said Restricted Reserve "A", a distance of 186.90 feet to the **POINT OF BEGINNING** and containing 32.409 acres of land.

LESS AND EXCEPT:

METES AND BOUNDS DESCRIPTION OF A 11.084 ACRE TRACT

Being a tract of land containing 11.084 acres, located in the John Corner Survey, Abstract Number 8, in Montgomery County, Texas; Said 11.084 acres being out of the remainder of a called 84.10 acre tract of land recorded in the name of Mara Moja Holdings, LLC in Montgomery County Clerk's File (M.C.C.F.) Number 2004110206 and being out of Restricted Reserve "B" of Minor Replat of Mara Mojaville, a subdivision recorded in Cabinet "Z", Sheet 1624, of the Montgomery County Map Records (M.C.M.R.); Said 11.084 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System of 1983, Central Zone):

BEGINNING, at a 5/8-inch iron rod found at the north corner of Restricted Reserve "A" of said Minor Replat of Mara Mojaville, on the southeast Right-of-Way (R.O.W.) line of C.B. Stewart Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.), for the most westerly corner of the herein described tract;

THENCE, with the southeast R.O.W. line of said C.B. Stewart Drive, the following three (3) courses:

1. 205.87 feet along the arc of a curve to the right, having a radius of 610.00 feet, a central angle of $19^{\circ} 20' 11''$, and a chord that bears North $38^{\circ} 16' 00''$ East, a distance of 204.89 feet to a 5/8-inch iron rod found at a point of tangency;
2. North $47^{\circ} 56' 06''$ East, a distance of 396.03 feet to a 5/8-inch iron rod found at an angle point;
3. North $54^{\circ} 32' 00''$ East, a distance of 71.22 feet to a 5/8-inch iron rod found at the west end of a transition line from the southeast R.O.W. line of said C.B. Stewart Drive to the southwest R.O.W. line of Buffalo Springs Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.), for the westerly north corner of the herein described tract;

THENCE, South $89^{\circ} 13' 47''$ East, with said transition line, a distance of 16.46 feet to a 5/8-inch iron rod found at the east end of said transition line, for the easterly north corner of the herein described tract;

THENCE, with the southwest R.O.W. line of said Buffalo Springs Drive, the following three (3) courses:

1. South $52^{\circ} 59' 33''$ East, a distance of 95.45 feet to a 5/8-inch iron rod found at an angle point;
2. South $47^{\circ} 27' 18''$ East, a distance of 545.16 feet to a 5/8-inch iron rod found at the beginning of a curve to the right;
3. 87.66 feet along the arc of said curve to the right, having a radius of 710.00 feet, a central angle of $07^{\circ} 04' 26''$, and a chord that bears South $43^{\circ} 55' 06''$ East, a distance of 87.60 feet to a 5/8-inch capped iron rod set for the most easterly corner of the herein described tract;

THENCE, through and across said remainder tract, the following four (4) courses:

1. South $87^{\circ} 35' 42''$ West, a distance of 133.48 feet to a 5/8-inch capped iron rod set at the beginning of a curve to the left;
2. 45.27 feet along the arc of said curve to the left, having a radius of 30.00 feet, a central angle of $86^{\circ} 27' 26''$, and a chord that bears South $44^{\circ} 54' 53''$ West, a distance of 41.09 feet to a 5/8-inch capped iron rod set at a point of tangency;

3. South $00^{\circ} 41' 22''$ East, a distance of 301.08 feet to a 5/8-inch capped iron rod set for the southeast corner of the herein described tract;
4. North $81^{\circ} 53' 01''$ West, at a distance of 453.58 feet pass the east line of said Restricted Reserve "B", continuing through and across said Restricted Reserve "B" a total distance of 664.97 feet to a 5/8-inch capped iron rod set for the southwest corner of the herein described tract;

THENCE, North $34^{\circ} 33' 56''$ West, continuing through and across said Restricted Reserve "B", a distance of 84.32 feet to a 5/8-inch capped iron rod set on a northerly west line of said Restricted Reserve "B" and on the east line of said Restricted Reserve "A";

THENCE, North $02^{\circ} 13' 14''$ West, with a line common to said Restricted Reserves "A" and "B", a distance of 106.54 feet to a 5/8-inch iron rod found at the northerly northwest corner of said Restricted Reserve "B" and the northeast corner of said Restricted Reserve "A";

THENCE, North $61^{\circ} 57' 37''$ West, with the north line of said Restricted Reserve "A", a distance of 186.90 feet to the **POINT OF BEGINNING** and containing 11.084 acres of land.

Tract II:

County: Montgomery
 Project: 20500 Eva St Montgomery
 M&B No: 25-070
 CS Job No: 24222

METES AND BOUNDS DESCRIPTION OF A 6.591 ACRE TRACT

Being a tract of land containing 6.591 acres, located in the John Corner Survey, Abstract Number 9, in Montgomery County, Texas; Said 6.591 acres being all of a called 6.59 acre tract of land recorded in the name of AMJJ, LLC in Montgomery County Clerk's File Number (M.C.C.F. No.) 2013017790; Said 6.591 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System of 1983, Central Zone):

BEGINNING, at a 5/8-inch iron rod found at the southwest corner of said 6.59 acre tract, same being the northeast intersection of State Highway 105 (width varies) and C.B. Stewart Drive (width varies per Cabinet "Y", Sheet 51, of the Montgomery County Map Records (M.C.M.R.)), for the southwest corner of the herein described tract;

THENCE, with the west lines of said 6.59 acre tract and with the east Right-of-Way (R.O.W.) line of said C.B. Stewart Drive, the following three (3) courses:

1. North $02^{\circ} 19' 12''$ East, a distance of 152.89 feet to a 5/8-inch iron rod found at an angle point;
2. North $00^{\circ} 32' 17''$ West, a distance of 400.50 feet to a 5/8-inch iron rod found at an angle point;
3. North $02^{\circ} 24' 12''$ East, at a distance of 36.56 feet pass a 5/8-inch iron rod found at the southwest corner of Restricted Reserve "B" of Mara Mojaville, a subdivision recorded in Cabinet "Z", Sheet 1624, of the M.C.M.R., continuing with the west line of said Restricted Reserve "B" an overall distance of 182.09 feet to a 5/8-inch capped iron rod found at the northwest corner of said 6.59 acre tract and the herein described tract;

THENCE, South 89° 22' 41" East, with the north line of said 6.59 acre tract, through and across said Restricted Reserve "B", a distance of 388.34 feet to a 5/8-inch capped iron rod found at the northeast corner of said 6.59 acre tract and the herein described tract;

THENCE, South 01° 53' 11" West, with the east line of said 6.59 acre tract and continuing through and across said Restricted Reserve "B", at a distance of 126.76 feet pass the south line of said Restricted Reserve "B", same being an angle point in the remainder of a called 84.10 acre tract recorded in the name of Mara Moja Holdings, Ltd. in M.C.C.F. No. 2004110206, continuing an overall distance of 776.31 feet to a 5/8-inch capped iron rod found at the southeast corner of said 6.59 acre tract, on the north R.O.W. line of said State Highway 105, for the southeast corner of the herein described tract;

THENCE, with the south lines of said 6.59 acre tract, and with the north R.O.W. lines of said State Highway 105, the following two (2) courses:

1. North 81° 49' 28" West, a distance of 288.26 feet to a 5/8-inch iron rod with a Texas Department of Transportation aluminum disk found at an angle point;
2. North 87° 25' 36" West, a distance of 87.58 feet to the **POINT OF BEGINNING** and containing 6.591 acres of land.

EXHIBIT "C"
METES AND BOUNDS DESCRIPTION OF TRACT II

METES AND BOUNDS DESCRIPTION OF A 11.084 ACRE TRACT

Being a tract of land containing 11.084 acres, located in the John Corner Survey, Abstract Number 8, in Montgomery County, Texas; Said 11.084 acres being out of the remainder of a called 84.10 acre tract of land recorded in the name of Mara Moja Holdings, LLC in Montgomery County Clerk's File (M.C.C.F.) Number 2004110206 and being out of Restricted Reserve "B" of Minor Replat of Mara Mojaville, a subdivision recorded in Cabinet "Z", Sheet 1624, of the Montgomery County Map Records (M.C.M.R.); Said 11.084 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System of 1983, Central Zone):

BEGINNING, at a 5/8-inch iron rod found at the north corner of Restricted Reserve "A" of said Minor Replat of Mara Mojaville, on the southeast Right-of-Way (R.O.W.) line of C.B. Stewart Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.), for the most westerly corner of the herein described tract;

THENCE, with the southeast R.O.W. line of said C.B. Stewart Drive, the following three (3) courses:

1. 205.87 feet along the arc of a curve to the right, having a radius of 610.00 feet, a central angle of $19^{\circ} 20' 11''$, and a chord that bears North $38^{\circ} 16' 00''$ East, a distance of 204.89 feet to a 5/8-inch iron rod found at a point of tangency;
2. North $47^{\circ} 56' 06''$ East, a distance of 396.03 feet to a 5/8-inch iron rod found at an angle point;
3. North $54^{\circ} 32' 00''$ East, a distance of 71.22 feet to a 5/8-inch iron rod found at the west end of a transition line from the southeast R.O.W. line of said C.B. Stewart Drive to the southwest R.O.W. line of Buffalo Springs Drive (width varies per Cabinet "Y", Sheet 51, of the M.C.M.R.), for the westerly north corner of the herein described tract;

THENCE, South $89^{\circ} 13' 47''$ East, with said transition line, a distance of 16.46 feet to a 5/8-inch iron rod found at the east end of said transition line, for the easterly north corner of the herein described tract;

THENCE, with the southwest R.O.W. line of said Buffalo Springs Drive, the following three (3) courses:

1. South $52^{\circ} 59' 33''$ East, a distance of 95.45 feet to a 5/8-inch iron rod found at an angle point;
2. South $47^{\circ} 27' 18''$ East, a distance of 545.16 feet to a 5/8-inch iron rod found at the beginning of a curve to the right;
3. 87.66 feet along the arc of said curve to the right, having a radius of 710.00 feet, a central angle of $07^{\circ} 04' 26''$, and a chord that bears South $43^{\circ} 55' 06''$ East, a distance of 87.60 feet to a 5/8-inch capped iron rod set for the most easterly corner of the herein described tract;

THENCE, through and across said remainder tract, the following four (4) courses:

1. South $87^{\circ} 35' 42''$ West, a distance of 133.48 feet to a 5/8-inch capped iron rod set at the beginning of a curve to the left;

2. 45.27 feet along the arc of said curve to the left, having a radius of 30.00 feet, a central angle of $86^{\circ} 27' 26''$, and a chord that bears South $44^{\circ} 54' 53''$ West, a distance of 41.09 feet to a 5/8-inch capped iron rod set at a point of tangency;
3. South $00^{\circ} 41' 22''$ East, a distance of 301.08 feet to a 5/8-inch capped iron rod set for the southeast corner of the herein described tract;
4. North $81^{\circ} 53' 01''$ West, at a distance of 453.58 feet pass the east line of said Restricted Reserve "B", continuing through and across said Restricted Reserve "B" a total distance of 664.97 feet to a 5/8-inch capped iron rod set for the southwest corner of the herein described tract;

THENCE, North $34^{\circ} 33' 56''$ West, continuing through and across said Restricted Reserve "B", a distance of 84.32 feet to a 5/8-inch capped iron rod set on a northerly west line of said Restricted Reserve "B" and on the east line of said Restricted Reserve "A";

THENCE, North $02^{\circ} 13' 14''$ West, with a line common to said Restricted Reserves "A" and "B", a distance of 106.54 feet to a 5/8-inch iron rod found at the northerly northwest corner of said Restricted Reserve "B" and the northeast corner of said Restricted Reserve "A";

THENCE, North $61^{\circ} 57' 37''$ West, with the north line of said Restricted Reserve "A", a distance of 186.90 feet to the **POINT OF BEGINNING** and containing 11.084 acres of land.